

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION II

CACR06-870

March 21, 2007

THOMAS JERMAINE DAVIS
APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[CR05-4745]

V.

HON. CHRISTOPHER C. PIAZZA,
CIRCUIT JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

After a jury found appellant Thomas Jermaine Davis guilty of two counts of aggravated robbery and two counts of misdemeanor theft of property, he was sentenced to two terms of ten years' imprisonment to be served consecutively in the Arkansas Department of Correction. Davis appeals his conviction, arguing that the State failed to provide substantial evidence that he was the person who robbed two pizza-delivery drivers in late September of 2005. Because Davis did not preserve this issue for appeal, we cannot address it.

At trial, the State presented five witnesses. Nick Germany, a Domino's Pizza delivery driver, testified that on September 28, 2005, he received a call to deliver a pizza to an apartment building in the 2000 block of Fendley Drive in North Little Rock. Upon arrival at

the scene, he was met in the parking lot by a man who walked up to him from across the street. The man told Germany that he was in the right location, and Germany followed him to the apartment building. Once they arrived at the apartment, the man told Germany to put the pizza down and to hand over his money. Germany stated that the man had a gun in his pocket but that it was not brandished. However, according to Germany, the man threatened that he would have blown Germany's "brains out" if he "wasn't black." The man then instructed Germany to return to his truck and to leave the scene. Germany did as instructed, and he called authorities after returning to the pizza shop.

The State's second witness was Kris Graves, a manager at Pizza Hut in North Little Rock. Graves testified that on the evening of September 29, 2005, he attempted to deliver a pizza to an apartment on Fendley Drive in North Little Rock, but there was not an answer at the door. He called the phone number associated with the order, and a man answered the call. Graves testified that the man said he was across the street but would be right there. A man then came to the apartment, approached Graves, and robbed him, saying "This here is a mother[-]fucking gun . . . I want everything you've got, and I don't have any problems killing a white boy." Graves stated that he cooperated, then returned to his truck, where he watched his assailant walk back across Fendley Drive. He then drove a block away and called the North Little Rock Police Department.

Based on Graves's call, the police went to a townhouse at 2801 John Ashley Drive searching for the suspect. The State's third witness, Ralph Viel, the person who was renting

the townhouse, verified that it was from his home telephone that both pizza orders were placed and confirmed that Davis had access to the phone in the townhouse. Viel also recalled that Davis had access to the garments—a black do-rag and a blue-and-black jacket—that were found in the townhouse, which matched Graves’s description of the clothing worn by his attacker.

Finally, the State presented testimony from two officers with the North Little Rock Department—R. Roebuck and R.C. Cox. Both officers acknowledged that while they were in Viel’s townhouse investigating the crime, Graves identified Davis as the person who robbed him. According to the officers, based on the information discovered in the Graves robbery they prepared a photo line-up for Germany’s consideration. Germany identified Davis as the person who robbed him.

At the close of the State’s case, the trial court inquired if Davis had “anything to put on the record,” to which Davis replied, “I just move for a Motion for Directed Verdict.” The trial court denied the motion. Following the conclusion of all evidence, Davis failed to renew his motion for directed verdict. After deliberating, the jury returned a verdict of “guilty” on all charges.

On appeal, Davis claims that the trial court committed reversible error by denying his motion for a directed verdict because the evidence presented at trial—relating to the victims’ identification of him as the perpetrator—was deficient. However, we are unable to review

the substance of Davis's argument because it is not properly preserved for appellate review.

Rule 33.1 of the Arkansas Rules of Criminal Procedure requires that:

[a] motion for directed verdict or for dismissal based on insufficiency of the evidence must specify the respect in which the evidence is deficient. A motion merely stating that the evidence is insufficient does not preserve for appeal issues relating to a specific deficiency such as insufficient proof on the elements of the offense.

Ark. R. Crim. P. 33.1(c); *see, e.g., Bowen v. State*, 342 Ark. 581, 30 S.W.3d 86 (2000). In his directed-verdict motion, Davis failed to specify how the State's case was deficient as required by Rule 33.1.

Davis also failed to renew his directed-verdict challenge at the close of all of the evidence. To preserve for appeal any issue regarding the sufficiency of the evidence at a criminal jury trial, the defendant must move for a directed verdict at the close of the evidence offered by the prosecution and again at the close of all of the evidence. Ark. R. Crim. P. 33.1. A defendant's failure to move for a directed verdict at both times constitutes a waiver of any issue pertaining to the sufficiency of the evidence to support the verdict. *Id.*

Davis's motion for directed verdict was deficient in two distinct details, either of which precludes our consideration of the appeal. Accordingly, the trial court is affirmed.

Affirmed.

HEFFLEY and MILLER, JJ., agree.